

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5263 of 2018 (O&M)

Date of Decision: 04.02.2020

Smt. Satinder Kaur and Another

... Appellant(s)

Versus

Harminder Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Atul Kaushik, Advocate
for the appellants.

Mr. Rajesh Sood, Advocate
for the respondent.

Anil Kshetarpal, J.

The plaintiff/appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below. The learned first Appellate Court has slightly modified the judgment & decree passed by the learned trial Court.

The plaintiffs, namely Satinder Kaur and Tarvinder Kaur, two sisters of defendant-Harminder Singh Banga, filed a suit claiming to be coparceners in the suit property on the ground that the property in question was purchased by late Sh.Narinder Singh and his wife late Smt. Gulshan Raj Kaur Banga (their parents) vide sale deed dated 29.10.1987. It was claimed that half of the amount was paid by Sh. Jawahar Singh, their grandfather, from the joint business. Sh.Narinder Singh died on 29.12.1989, whereas Smt. Gulshan Raj Kaur Banga died on 02.07.2014. On the death of Narinder Singh, on the basis of affidavit filed by all the natural heirs, half share

belonging to Narinder Singh was also mutated in favour of Smt. Gulshan

Raj Kaur Banga. The plaintiffs claimed that they were shocked to know that the entire property has been transferred in favour of defendant-their brother. Thus, the plaintiffs claimed that such transfer, made by the Chandigarh Administration, is illegal.

The defendant contested the suit by pleading that the property is not a joint hindu family and Smt. Gulshan Raj Kaur Banga was the owner of the property after the death of Narinder Singh as per the affidavit given by all the natural heirs. Thereafter, Smt. Gulshan Raj Kaur Banga transferred the property in favour of the defendant vide transfer deed dated 11.01.2012.

The learned trial Court, on appreciation of evidence, held that the husband and wife i.e. Narinder Singh and Smt. Gulshan Raj Kaur Banga were the owners of the property in dispute having equal share. After the death of Narinder Singh, 12.5% fell to the share of Smt. Gulshan Raj Kaur Banga, whereas 12.5% fell to the share of each of the plaintiffs and the defendant. Thus, the Court declared that the transfer deed is legal to the extent of 62.5%. The Court further held that the defendant became owner to the extent of 75% share in the property.

The learned first Appellate Court, however, modified the aforesaid judgment & decree and declared the defendant/respondent to be the exclusive owner of the property.

Learned counsel appearing for the appellants submitted that the affidavits Ex.DW.4/C, Ex.DW.4/D, Ex.DW.4/E & Ex.DW.4/F cannot be used to transfer immovable property worth more than ₹ 100/-. He, hence, submitted that the learned first Appellate Court has erred in modifying the decree.

On the other hand, learned counsel appearing for the defendant/respondent has submitted that the exclusive ownership of Smt. Gulshan Raj Kaur Banga after the death of Narinder Singh was never disputed. Therefore, the learned first Appellate Court has correctly held that the defendant is the exclusive owner of the property as per the transfer deed dated 11.01.2012.

This Court has considered the arguments of learned counsel for the parties and with their able assistance, gone through the judgments passed by the Courts below and the requisitioned record.

At the outset, it must be noticed that in the first blush, the arguments of learned counsel for the appellants appear to be attractive, however, on deeper scrutiny, found no substance. The plaintiffs themselves had filed a rejoinder to the written statement filed while asserting as under:-

“1. That the contents of Para No.1 of reply of the merits are specifically wrong and denied it is submitted that plaintiffs are the coparcener and in possession of the suit property since the day, when the possession was given to the plaintiffs by mother Smt. Gulshan Raj Kaur Banga.

*It is against submitted here that the property in the dispute is not a self acquired property, although this property was purchased in the name of late Shri Narender Singh and late Smt. Gulshan Raj Kaur Banga parents of the plaintiffs and defendant on dated 30.10.1987 by Shri Sarvan Kumar other contents of this para regarding the purchase of this property are matter of record **it is again submitted that Smt. Gulshan***

Raj Kaur Banga mother of the party was exclusive owner of the entire house in dispute and she was in exclusive possession of the suit property along with plaintiffs, defendant was never in possession of suit property at Chandigarh, he is/was residing in Delhi house no. H-315, New Rajinder Nagar, New Delhi, defendant is involved in cheating case when he tried to get the mutation of the plot of Rohini in his name by giving the false signatures of the plaintiffs, and thereafter officers of the DDA Department started the process of cancellation of mutation in the name of the defendant vide P lot No. 351 Block A Pocket 2 Sector 29 measuring 32.00 SQM in Rohini Resdl. Scheme, department had sent a letter vide No. F.45(2545)2004/LAB (RO)/1016 to the defendant mentioning/warning.

Further, it may please be noted that if it is found at any later stage that the information/documents furnished by you and other legal heirs were not correct or that you have misrepresented the matter in any manner whatsoever the mutation will be withdrawn, allotment of the plot shall be cancelled and the premium deposited against the plot shall also be forfeited in addition to any prosecution that may be launched against you for misrepresentation/fraud. The process of cancellation of mutation has been started as the affidavit of the plaintiffs has submitted forge by signing a forged signature of the plaintiffs, the plaintiffs had give the statement to the DDA department for

forged signature, after receiving the letter by the department. It is again submitted that the signatures of the plaintiffs have been proved false and after cancellation the mutation of plot in the name of defendant, it was clearly stated by the officers of the department that they are going to file the complaint/report to the internal department of the DDA. The letter of the department is Annexure A”.

On careful reading thereof, it is apparent that Smt. Gulshan Raj Kaur Banga was admitted to be exclusive owners of the entire house after the death of Narinder Singh. Therefore, the learned first Appellate Court was correct in recording a finding that since the ownership of Smt. Gulshan Raj Kaur Banga has never been disputed by the plaintiffs, therefore, now they cannot be allowed to plead that Smt. Gulshan Raj Kaur Banga was not its exclusive owner.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 04, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No